UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Chero Webb, Plaintiff, v. Southwest Credit Systems, LP, Defendant.	Case No. **COMPLAINT FOR DAMAGES UNDER THE FAIR DEBT COLLECTION PRACTICES ACT, THE TELEPHONE CONSUMER PROTECTION ACT, THE MICHIGAN OCCUPATIONAL CODE AND OTHER EQUITABLE RELIEF** **JURY TRIAL DEMANDED**

PARTIES

1. Plaintiff, Chero Webb ("Chero"), is a natural person who resided in Detroit, Michigan, at all times relevant to this action.

2. Defendant, Southwest Credit Systems, LP ("SWC"), is a Texas limited partnership that maintained its principal place of business in Carrollton, Texas, at all times relevant to this action.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. §1331, this Court has federal question jurisdiction over this matter as it arises under the Fair Debt Collection Practices Act

(“FDCPA”), 15 U.S.C. § 1692 et seq. and the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

4. Pursuant to 28 U.S.C. §1367(a), this Court has supplemental jurisdiction over Chero’s claims under the Michigan Occupational Code (“MOC”), Mich. Comp. Laws § 339.901, et seq., because those claims share a common nucleus of operative facts with Chero’s claims under the FDCPA. S*ee Litt v. Midland Credit Management, Inc.*, 2014 WL 1977137 (E.D. Mich. May 15, 2014) (in FDCPA case, supplemental jurisdiction exercised over claims under MOC).

5. Pursuant to 28 U.S.C. § 1391(b), venue is proper because a substantial part of the events giving rise to this claim occurred in this judicial district.

STATEMENT OF FACTS

6. Before SWC began contacting Chero, it and Chero had no prior business relationship and Chero had never provided express consent to SWC to be contacted on her cellular telephone.

7. SWC regularly uses instrumentalities of interstate commerce and the mails to collect consumer debts owed or due or asserted to be owed or due another.

8. The principal source of SWC’s revenue is debt collection.

9. SWC is a "debt collector” as defined by 15 U.S.C. § 1692a(6).

10. As described, *infra*, SWC contacted Chero to collect a debt that was incurred primarily for personal, family, or household purposes.

11. This alleged obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).
12. Chero is a "consumer" as defined by 15 U.S.C. § 1692a(3).
13. Within the past twelve months, around February 2016, SWC began calling Chero on her cellular phone ending in -4031 in an attempt to collect a debt for another individual.
14. Shortly after the calls began, Chero advised SWC that it had called the wrong number.
15. In addition, Chero communicated her desire that SWC cease calling her.
16. Despite this communication, SWC continued to call Chero on her cellular phone.
17. On more than one occasion, Chero reiterated that SWC called the wrong number and communicated her desire that SWC cease calling her.
18. Nevertheless, SWC continued to call Chero on her cellular phone in an attempt to collect a debt for another individual.
19. SWC's policies and procedures for processing account data received from original creditors fail to identify easily discoverable errors and avoid the needless harassment of undeserving consumers like Chero.
20. SWC unreasonably relied upon inaccurate information provided to SWC by one (1) or more original creditors for whom SWC was attempting to collect a debt when SWC called Chero's cellular telephone.

21. SWC's policies and procedures violate the FDCPA.

22. SWC's collection efforts, including but not limited to its telephone calls, caused Chero emotional distress in the form of frustration, annoyance, aggravation, and anxiety.

23. SWC's collection efforts also intruded upon Chero's privacy.

24. In addition, each time SWC placed a telephone call to Chero, SWC occupied Chero's telephone number such that Chero was unable to receive other phone calls at that telephone number while SWC was calling her.

25. SWC's telephone calls also forced Chero to lose time by having to tend to SWC's unwanted calls.

COUNT ONE

Violation of the Fair Debt Collection Practices Act

26. Chero re-alleges and incorporates by reference Paragraphs 6 through 25 above as if fully set forth herein.

27. In order to establish a violation of Section 1692d of the FDCPA, a consumer need not prove intentional conduct by the debt collector. *See Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2nd Cir. 2010); *Horkey v. J.V.D.B. & Assocs., Inc.*, 333 F.3d 769, 774 (7th Cir. 2013) ("[Plaintiff] points to no evidence in the record regarding [Defendant's] intent, which is just as well, because intent is irrelevant" in a § 1692d claim).

28. "Instead, applying an objective standard, as measured by the 'least sophisticated consumer,' the consumer need only show that the likely effect of the debt collector's communication or conduct could be construed as harassment, oppression or abuse." *See Lee v. Credit Mgmt., LP*, 846 F. Supp. 2d 716, 721 (S.D. Tex. 2012).

29. The likely effect of SWC's debt collection efforts, as measured by the "least sophisticated consumer" standard, was "to harass, oppress, or abuse" Chero.

30. SWC violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Chero in connection with the collection of the debt.

COUNT TWO

Violation of the Fair Debt Collection Practices Act

31. Chero re-alleges and incorporates by reference Paragraphs 6 through 25 above as if fully set forth herein.

32. A debt collector's intent to violate the FDCPA may be inferred by its maintenance of policies and procedures which, in themselves, violate the FDCPA. *See Anchondo v. Anderson, Crenshaw & Associates, L.L.C.*, 256 F.R.D. 661, 671 (D.N.M. 2009); see *also Kromelbein v. Envision Payment Sol., Inc.*, 2013 WL 3947109, *7 (M.D. Penn. Aug. 1, 2013)("company policy can be just as much a violation of [FDCPA] as the rogue act of an individual

employee. If anything, a company policy that violates the FDCPA is a more egregious transgression because it indicates endemic, rather than isolated, disregard for debtor rights."); *citing Edwards v. Niagara Credit Sol., Inc.*, 586 F. Supp. 2d 1346, 1354 (N.D. Ga. 2008) (awarding maximum damages in part because conduct was company policy, thereby making it routine and frequent).

33. SWC's policies and procedures, as described in Paragraphs 19 through 20 *supra*, constitutes "conduct the natural consequence of which is to harass, oppress, or abuse" consumers.

34. SWC's practice, therefore, violates Section 1692d of the FDCPA, which provides:

> A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

See 15 U.S.C. §1692d.

35. Because SWC's practice, in itself, violates the FDCPA, it reflects an intent to harass consumers generally.

36. SWC violated 15 U.S.C. § 1692d(5) by causing Chero's telephone to ring or engaging Chero in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass Chero.

COUNT THREE

Violation of the Fair Debt Collection Practices Act

37. Chero re-alleges and incorporates by reference Paragraphs 6 through 25 above as if fully set forth herein.

38. SWC violated 15 U.S.C. § 1692f by using unfair or unconscionable means to collect the debt.

COUNT FOUR

Violation of the Telephone Consumer Protection Act

39. Chero re-alleges and incorporates by reference Paragraphs 6 through 25 above as if fully set forth herein.

40. Senator Fritz Hollings, the original sponsor of the TCPA, stated:

> Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.

137 Cong. Rec. 30,821 (1991).

41. The TCPA defines an automatic telephone dialing system ("ATDS") as "equipment which has the capacity…(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

42. "[A] predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a

sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers." *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 13, ¶ 13; *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

43. A predictive dialer is an ATDS within the meaning of the TCPA. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 13, ¶ 13; *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

44. SWC used a predictive dialer to place calls to Chero's cellular phone.

45. The TCPA provides, in part:

> (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—
>
> > (1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—
> >
> > > (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—
> > >
> > > * * *
> > >
> > > > (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call…

47 U.S.C. §§ 227(b)(1)(A)(iii).

46. The term "called party," as used in Section 227(b)(1)(A) of the TCPA, refers to the subscriber or the regular user of the called number at the time the telephone call is made. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, pp 40-41, ¶¶ 72-73.

47. Any consent that may have been previously given as to a called telephone number lapses when that number is reassigned. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 641 (7th Cir. 2012); *Sterling v. Mercantile*

Adjustment Bureau, LLC, 2013 U.S. Dist. LEXIS 186432, *6-7 (W.D.N.Y. Nov. 22, 2013).

48. A caller that places calls to a reassigned telephone number without the express consent of the called party is deemed to have "constructive knowledge" of the reassignment after one phone call has been placed to that reassigned number. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 40, ¶ 72.

49. Chero was the "called party" in each telephone call SWC placed to Chero's cellular telephone.

50. SWC violated 47 U.S.C. § 227(b)(1)(A) on multiple and separate occasions by each time using an ATDS and/or an artificial or prerecorded voice to call Chero on her cellular telephone without Chero's prior express consent or after such consent had been revoked.

51. In addition, The TCPA provides, in part:

> If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. § 227(b)(3).

52. The Communications Act of 1943, of which the TCPA is a part, defines "willful" as "the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision[], rule or regulation...." 47 U.S.C. § 312(f).

53. In order to establish a "willful" or "knowing" violation of the TCPA, a plaintiff need not demonstrate that the defendant intended to violate the statute, or that it knew or should have known it was violating the statute. *See Roylance v. ALG Real Est. Servs., Inc.* 2015 U.S. Dist. LEXIS 44930, *31 (N.D. Cal. Mar. 16, 2015); *Bridgeview Health Care Ctr. Ltd. v. Clark*, 2013 U.S. Dist. LEXIS 37310, *21-22 (N.D. Ill. Mar. 19, 2013); *Steward v. Regent Asset Mgmt. Solutions, Inc.*, 2011 U.S. Dist. LEXIS 50046, *18-20 (N.D. Ga. 2011).

54. Instead, a plaintiff need only show that the defendant engaged in a "voluntary act" that violated the TCPA. *See Bridgeview*, 2013 U.S. Dist. LEXIS, at *21-22; see also *Roylance*, 2015 U.S. Dist. LEXIS, at *31 (intentionally making phone calls that violated TCPA, without intent to violate the statute, was sufficient to warrant treble damages).

55. SWC voluntarily placed telephone calls to Chero's cellular telephone number using an ATDS and/or an artificial or prerecorded voice.

56. In addition, a company that places telephone calls using an ATDS and/or an artificial or prerecorded voice bears a responsibility to place intermittent live verification calls to ensure the subscriber being called has provided his or her express consent to be called. *See Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1322 (S.D. Fla 2012); *aff'd* 755 F.3d 1265 (11th Cir. 2014).

57. SWC failed to adequately place intermittent live verification calls to Chero's cellular telephone number to ensure that Chero had provided her express consent to SWC to call those telephone numbers.

58. SWC's violations of 47 U.S.C. § 227(b)(1)(A) were willfully and knowingly made.

COUNT FIVE

Violations of the Michigan Occupational Code

59. Chero re-alleges and incorporates by reference Paragraphs 6 through 25 above as if fully set forth herein.

60. SWC is a "collection agency" as that term is defined in the MOC, Mich. Comp. Laws § 339.901(b).

61. Chero is a "consumer" as defined by the MOC and is a person whom the act was intended to protect, Mich. Comp. Laws § 339.901(f).

62. SWC attempted to collect a "debt" within the meaning of Mich. Comp. Laws § 339.901(a).

63. SWC willingly and knowingly violated Mich. Comp. Laws § 339.915(n) by using harassing, oppressive, or abusive methods to collect a debt.

64. SWC willingly and knowingly violated Mich. Comp. Laws § 339.915(q) by failing to implement a procedure designed to prevent a violation by an employee.

65. SWC's willful violations of the MOC entitle Chero to a civil penalty of not less than three (3) times the actual damages he sustained as a result of SWC's violations of the MOC.

JURY DEMAND

66. Chero demands a trial by jury.

PRAYER FOR RELIEF

67. Chero prays for the following relief:

    a. Judgment against SWC for actual damages, statutory damages, and costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.

    b. An order enjoining SWC from placing further telephone calls to Chero's cellular telephone number pursuant to 47 U.S.C. § 227(b)(3).

    c. Judgment against SWC for statutory damages pursuant to 47 U.S.C. § 227(b)(3) for each and every call SWC made in violation of the TCPA.

d. Judgment against SWC for actual damages, statutory damages, costs and reasonable attorney's fees, plus a civil penalty of not less than three (3) times Chero's actual damages, pursuant to Mich. Comp. Laws § 339.916.

e. For such other legal and/or equitable relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

Date: November 10, 2016

By: /s/ David M. Menditto
One of Plaintiff's Attorneys

David M. Menditto, Esq.
Illinois Bar No. 6216541
HYSLIP & TAYLOR, LLC LPA
1100 W. Cermak Rd., Suite B410
Chicago, IL 60608
Phone: 312-380-6110
Fax: 312-361-3509
Email: davidm@fairdebt411.com
Illinois Bar No. 6216541